

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing date: August 8, 2017 at 10:00 a.m.

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IN RE:

CASE NO.: 14-12608-shl

Everton Aloysius Sterling,

CHAPTER 13

Debtor.

Hon. Judge: Sean H. Lane
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NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY

PLEASE TAKE NOTICE, that upon the application of Deutsche Bank National Trust Company, as Trustee for FFMLT Trust 2006-FF6, Mortgage Pass-Through Certificates, Series 2006-FF6, the undersigned shall move this Court for an Order, pursuant to 11 U.S.C. §362(d) of the Bankruptcy Code, vacating the automatic stay to permit Movant to enforce its mortgage on the Debtor's premises located at 726 E. 219 Street, Bronx, New York 10469, and for such other and further relief as is just and proper.

This Motion shall be heard at the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York, 10004 on August 8, 2017 at 10:00 a.m., or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE, that answering affidavits, if any, must be served on the party proposing the action or order so as to be received at least seven (7) days prior to the date set for the hearing.

Dated: Bay Shore, New York
July 7, 2017

**FRENKEL LAMBERT WEISS
WEISMAN & GORDON LLP**

BY: 

Karen Sheehan, Esq.

53 Gibson Street

Bay Shore, New York 11706

(631) 969-3100

Our File No.: 01-085179-B00

TO: Everton Aloysius Sterling
c/o General Post 341
Bronx, NY 10469-9998

Yann Geron
Chapter 7 Trustee
Reitler Kailas & Rosenblatt LLC
885 Third Avenue, 20th Floor
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U.S. Trustee
Office of the United States Trustee
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MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Karen Sheehan, an attorney admitted to practice law, in the courts of the State of New York and in this Court, hereby affirms the following to be true under penalty of perjury:

1. I am a partner with Frenkel Lambert Weiss Weisman & Gordon LLP, attorneys for Deutsche Bank National Trust Company, as Trustee for FFMLT Trust 2006-FF6, Mortgage Pass-Through Certificates, Series 2006-FF6 (hereinafter "Deutsche Bank"), a secured creditor of the Debtor. I am fully familiar with the facts of this case and submit this affirmation in support of Deutsche Bank's motion for relief from the automatic stay.

2. This is a contested matter brought pursuant to Federal Rules of Bankruptcy Procedure Rule 4001, 9013 and 9014 and Section 362(d) of Title 11 of the United States Code (the "Bankruptcy Code") for an Order (1) granting Deutsche Bank relief from the automatic stay due to the failure of the Debtor to make payments, and/or provide Deutsche Bank with adequate protection for its security interest in the real property located at 726 E. 219 Street, Bronx, New York 10469 ("Premises"); and (2) granting Deutsche Bank such other and further relief as the Court deems just and proper.

3. Deutsche Bank is the holder of a Note and Mortgage given by the borrower, Howard White, (hereinafter "Borrower") on February 24, 2006 to secure payment in the original principal sum of \$448,000.00 (hereinafter "Note" and "Mortgage" respectively), pledging the Premises as security. A copy of the Note and Mortgage are annexed hereto as **Exhibit A**.

4. The Note and Mortgage were transferred to Deutsche Bank by properly endorsed Note. A note and mortgage may be transferred by either a written assignment or the physical delivery of the note. The mortgage passes with the debt as an inseparable incident. See Flyer v. Sullivan, 284 A.D. 687, 134 N.Y.S.2d 521 (1st Dept. 1954); Mortgage Electronic Registration Sys. Inc., v. Coakley, 41 A.D. 3d 674, 838 N.Y.S.2d 622 (2nd Dept. 2007); See also In Re: Feinberg, 442 B.R. 215 (S.D.N.Y 2010).

5. The annexed assignments of mortgage ("Assignments") also evidence the transfer to Deutsche Bank. Copies of the Assignment are annexed hereto as **Exhibit B**.

6. On June 27, 2008, the Borrower, Howard White, executed a deed which conveyed ownership of the property to the Debtor. A copy of the deed is annexed hereto as **Exhibit C**.

7. Specialized Loan Servicing LLC services the loan on the Property referenced in this Motion. In the event the automatic stay in this case is modified, the case dismisses, and/or the Debtor obtains a discharge and a foreclosure action is commenced on the mortgaged Property, the foreclosure will be conducted in the name of Movant. Movant, directly or through an agent, has possession of the Note. The Note is either made payable to Movant or has been duly endorsed. Movant is the original mortgagee or beneficiary or the assignee of the Mortgage/Deed of Trust.

8. On September 15, 2014, the Debtor herein filed a petition under Chapter 13 of the Bankruptcy Code and pursuant thereto an automatic stay was imposed.

9. As required by S.D.N.Y. Administrative Order #347, and pursuant to Local Bankruptcy Rule 4001-1, the completed Motion for Relief worksheet and Declaration is attached hereto as **Exhibit D**.


10. As fully set forth in the accompanying Worksheet executed by Ami McKernan on June 29, 2017, the Debtor is in default under the terms of the Note and Mortgage.

11. That by failing to make the aforesaid mortgage payments, Debtor has failed to provide Deutsche Bank with adequate protection for its security, contrary to the requirements of the Bankruptcy Code.

WHEREFORE, Deutsche Bank respectfully requests an order vacating the automatic stay as it pertains to the Premises and for such other and further relief as is just and proper.

Dated: July 7, 2017
Bay Shore, New York

**FRENKEL LAMBERT WEISS
WEISMAN & GORDON LLP**

BY: 
Karen Sheehan, Esq.
53 Gibson Street
Bay Shore, New York 11706
(631) 969-3100
Our File No.: 01-085179-B00

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CASE NO.: 14-12608-shl

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ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY

Deutsche Bank National Trust Company, as Trustee for FFMLT Trust 2006-FF6, Mortgage Pass-Through Certificates, Series 2006-FF6, having moved this Court for an order granting relief from the automatic stay, pursuant to Bankruptcy Rule 4001 and 11 U.S.C. §362(d) with proof of service upon the Debtor, the Trustee and the U. S. Trustees, having been duly filed, and this Motion having come on to be heard on August 8, 2017, and there being no opposition thereto;

Now upon consideration of the Motion of Deutsche Bank, this Court finds that adequate notice has been given; that all interested parties have had an opportunity to be heard; that the Debtor has failed to provide Deutsche Bank with adequate protection for its security, contrary to the requirements of the Bankruptcy Code, for the reasons stated in the Motion; and that Deutsche Bank is entitled to relief under 11 U.S.C. §362(d).

IT IS THEREFORE;

ORDERED, that the stay afforded by 11 U.S.C. §362(a) be, and is hereby, vacated to permit Deutsche Bank its successors and/or assigns to foreclose its security interest in the real premises located at and commonly known as 726 E. 219 Street, Bronx, New York 10469; and it is further

ORDERED, that the Trustee be informed of any surplus monies resulting from the sale of the collateral.

Dated: New York, New York
, 2017

Sean H. Lane
United States Bankruptcy Judge